IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1774 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

JIVANDAS SADU THRO' HEIR JAYANTILAL JIVANDAS & 4 ORS.

Appearance:

MR TH SOMPURA AGP for Petitioner-State

MR JR NANAVATI for MR SB PARIKH, for Respondent No.1 to 4

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 10/01/97

ORAL JUDGEMENT

The Urban Land Tribunal and Ex-officio Addl. Chief Secretary to the Government, in Appeal No. Jamnagar 28 of 1994, decided on September 22, 1994 allowed the appeal and quashed and set aside the orders passed by the Competent Authority and has said that there was no land in excess with the appellants and therefore, their case should be finalised and filed. These orders dated September 22, 1994 came to be challenged under the present petition filed on January 20, 1996. The petition has been admitted and the ad-interim relief in terms of

para 11(B) has been granted.

A reference to the prayer clause 11(B) in the petition would go to show that, pending admission, hearing and final disposal of the petition, the implementation, operation and execution of the orders under challenge have been stayed.

Learned Counsel Mr. Nanavati who appears on behalf of the respondents nos.1 to 4 objects to the granting of this petition on the basis of the principle laid down by the Supreme Court in the case of STATE OF M.P. AND OTHERS, ETC.ETC. APPELLANTS v. NANDLAL JAISWAL AND OTHERS, ETC.ETC. RESPONDENTS, AIR 1987 S.C. 251 and a decision rendered by the learned Single Judge of this Court in the case of JAYANTILAL KASALCHAND SHAH v. STATE OF GUJARAT AND ANR., 1994 (2) GCD 83, GUJARAT.

The undisputed facts are that, the Competent Authority and the Deputy Collector, Urban Land Ceiling, Jamnagar, under the orders dated March 16, 1990 had come to the conclusion that the land admeasuring 3806 sq.mtrs. would be the excess land. These orders came to be challenged by the holders of the land by filing appeal before the Urban Land Tribunal, Ahmedabad. The appeal came to be registered as Appeal No. Jamnagar 28 of 1994. The Tribunal had taken the view that, the land appurtenant and additional land appurtenant were required to be deducted. This opinion of the Tribunal has culminated in the orders dated September 22, 1994, under which it has been said that there was no excess land and, therefore, the case of appellants should be finalised and filed. These orders are sought to be challenged in the present petition before me.

It is not in dispute that the above said orders came to be passed on September 22, 1994 while the present petition challenging the said orders came to be presented on January 20, 1996. Any how, the first orders came to be passed by the learned Single Judge admitting the matter, issuing Rule and granting ad-interim relief in terms of para 11(B), on August 1, 1996. Therefore, it appears that the present petition came to be filed after a lapse of one year and four months.

Learned Counsel Mr. Nanavati for the respondents nos.1 to 4 placing reliance upon the aforementioned two pronouncements; one of the Supreme Court and the other one of this Court, urges that, if the petition is recognised and if the same is allowed, it would amount to unsettling of the settled matters. The learned Counsel

urges that, during the period between passing of the orders by the Tribunal and the filing of the petition before this Court and obtaining the interim relief, the respondents nos.1 to 4, exercising their own rights, have disposed of the land in form of 21 plots. The learned Counsel urges that, all these plots came to be disposed of, on 27th April 1996 by executing different sale deeds and a release deed. The learned Counsel, therefore, urges that, equities in favour of the third parties have been created during this period and the allowing of the present petition would result in injustice not only to the respondents nos.1 to 4 but also to the third parties in whose favour the equities have been created. Learned Govt. Counsel Mr. Sompura wanted to urge that the orders under challenge appear to be ex-facie bad in law. There was an endeavour on the part of the learned Govt. Counsel to urge before me that there is only a bald assertion in the affidavit-in-reply filed by the respondents nos.1 to 4, saying that the land has been divided into 21 plots and later on, 20 documents of sale and one release deed have been executed on 27th April 1996, but excepting the above said bald assertion in the affidavit-in-reply, there is nohting on record to warrant such a conclusion. Learned Counsel Mr. Nanavati points out that, in the affidavit-in-reply, the said respondents were craving leave to, refer to and rely upon the said documents of sale at the time of hearing of the petition. Therefore, with a view to foreclose the contention coming from learned Govt.Counsel Mr.Sompura for the petitioner, learned Counsel Mr.Nanavati presents the certified copies of the above said documents to satisfy the conscience of the Court and to cut short the contention coming from the learned Govt. Counsel. In view of this fact-situation, it cannot be denied that, during the intervening period, the land in question has been divided into plots and later on, they have been transferred in favour of the third parties and that, therefore, equities have been created in their favour.

The Supreme Court pronouncement in the case of STATE OF M.P.v.NANDLAL JAISWAL AND OTHERS (supra) was, of course, under the M.P. Excise Act (2 of 1915) and certain rules framed thereunder. But, while considering the powers of the High Court to issue the appropriate writ under Article 226 of the Constitution of India, the Supreme Court makes it clear that, these powers are discretionary and the High Court, in exercise of its discretion, does not ordinarily assist the tardy and the indolent or the acquiscent and the leghargic. The Supreme Court points out that, the High Court does not ordinarily permit a belated resort to the extra-ordinary

remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train, new injustices. It is also pointed out that the rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice to the third parties.

While examining the facts of the said case, the Supreme Court has noticed that, there was considerable delay on the part of the petitioners in filing the writ petitions and in the intervening period, the respondents had acquired the land, constructed distillery buildings, had purchased plant and machinery and had spent considerable time, money and energy towards setting up of the distillery. These circumstances, according to the Supreme Court, were sufficient to disentitle the petitioners to discritionary orders under Article 226 of the Constitution.

Thus, the Supreme Court pronouncement on which learned Counsel Mr.Nanavati for the respondents nos.1 to 4 placed reliance speaks of two principles. Firstly, the High Court does not ordinarily permit a belated resort to the extra-ordinary remedy under the writ jurisdiction because the rights of the third parties might have intervened and if the writ jurisdiction is exercised after an unreasonable delay, it may have the effect of inflicting injustice on third parties also. The second aspect made clear is that during the intervening period, many things had happened and the changed circumstances would be sufficient to disentitle the petitioners to obtain the relief under Article 226 of the Constitution.

The second decision on which the reliance is being placed by learned Counsel Mr. Nanavati is the decision rendered by this Court in the case of JAYANTILAL KASALCHAND SHAH (supra). It was, of course, a case under Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976. The question which came to be examined by the learned Single Judge, was, in respect of the exercise of revisional powers after the lapse of about two years. The decision points out that the exercise of power cannot be termed unreasonable merely on the ground of lapse of time without anything more. But in that case, there was not only the delay of two years, it was noticed that the exercise of the revisional powers contemplated under Section 34 of the Act of 1976 would result in unsettling the settled matter. Taking this view, as it is clear from the pronouncement, the orders passed under Section

34 of the Act of 1976 came to be quashed and set aside.

Here also, learned Govt.Counsel Mr.Sompura urges that the delay of one year and four months cannot be said to be an unreasonable one which would disentitle the petitioner-State from filing the petition and asking for the discretionary relief. But it requires to be noticed that, here I am not concerned with a case of delay of one year and four months simplicitor, but I am concerned with a case in which during the period between the passing of the impugned orders and the posing of the challenge against them by filing the petition, as it is clear from the affidavit-in-reply, the land has been divided into plots and have been transferred in favour of the 21 persons under different deeds of sale and release. This assertion in the affidavit-in-reply gets due support from the copies of the deeds which learned Counsel Mr. Nanavati has presented for the perusal of the Court and the learned Govt. Counsel. It is, therefore, abundantly clear that, during this period of one year and four months, which does not appear to be a pretty long time, the things have moved fast and ultimately, the land has been divided into plots and they have been disposed of and the rights thereon in favour of third parties have been created.

Therefore, looking to the principle laid down by the Supreme Court and this Court, in the aforementioned two decisions, it appears that, as things have moved fast during the intervening period, and as equities in favour of the third parties have been created, the granting of the petition would amount to unsettling of the settled. While exercising the writ jurisdiction under Article 226 of the Constitution of India, this does not appear to be permissible. I am fortified in view of the pronouncement of the Apex Court in the case of STATE OF M.P. v. NANDLAL JAISWAL AND OTHERS (supra) as well as the principle laid down by the learned Single Judge of this Court in the case of JAYANTILAL KASALCHAND SHAH (supra).

In the result, therefore, the present petition fails and the same requires to be dismissed. It is hereby accordingly dismissed. Rule shall stand discharged. Interim relief shall stand vacated.

Learned Govt.Counsel wanted to urge before me that, on merits, the impugned orders do not appear to be maintainable in eye of law because, according to the learned Govt. Counsel, no case was made out for getting the deduction of the land appurtenant and the additional land appurtenant to the constructed property. I have no

opinion to express on this aspect because, I have preferred not to enter into the merits of the case in view of my finding that the present petition is not required to be recognised, at this belated juncture, when many things have settled creating equities in favour of the third parties numbering twenty-one.

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